

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5612 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

HARIJAN TAPU GOVIND

Versus

STATE OF GUJARAT

Appearance:

MR SV PARMAR for Petitioner
MR KT DAVE, A.G.P. for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 25/03/98

ORAL JUDGEMENT

Heard the learned counsel for the parties.

2. The learned counsel for the respondents admit that reply has not been filed in this case and I also do not find any reply in this special civil application.
3. The land in dispute which was allotted to the petitioner was ordered to be forfeited by the State

Government as the petitioner had violated the condition subject to which the land in dispute had been allotted to him. Against the order of forfeiture of the land to the Government, the petitioner preferred an appeal before the Secretary (Appeals) Revenue Department at Ahmedabad. This appeal was decided by the appellate authority on 5th November, 1982 and by making reference to the Government Resolution No.7907 dated 26th August, 1947 and specifically para-3 thereof and taking it to be a case of first breach of condition of allotment by the petitioner, who belongs to backward class ordered that the land may be regranted to the petitioner subject to the payment of some reasonable amount by way of penalty. The order of Collector of forfeiture of the land in dispute to the Government was quashed and set aside. After this order, the petitioner made a request to the Collector to regrant the land to him and in this connection the petitioner received first communication of the Collector i.e. his letter dated 11-4-1983, copy of which is submitted on the record as annexure 'J'. In this letter, it has been informed that against the order of Secretary (Appeals) i.e. 5th November, 1982, the Collector has filed an appeal to the Government and decision is awaited from the Government and Government's decision will be communicated to the petitioner. Then comes another letter of the Collector dated 7-8-1986 under which the petitioner has been ordered to pay Rs.4,74,374/- as amount of the market price of the land for regrant of the land in question. From the letter aforesaid it transpires that this amount is demanded by the respondent-Collector under the direction of the Government.

4. The learned counsel for the respondents on being asked by the Court is unable to give reply on the following points.

- (i) whether any appeal has been filed by the Collector against the order dated 5th November, 1982;
- (ii) whether such appeal is provided under the relevant Act to the Government more so when the order of the Secretary dated 5th November, 1982 has been passed in the name of the Governor of the State;
- (iii) if any such appeal is filed, what final order has been passed thereon;
- (iv) what are the directions given by the Government in pursuance of which the Collector concerned has

demanded from the petitioner vide its letter dated 7-8-1986, Rs.4,74,374/- for regrant of the land in dispute to him in his favour;

(v) whether before giving directions to the Collector concerned to charge Rs.4,74,374/- by way of penalty for regrant of land in dispute to the petitioner, the petitioner has been given any notice or opportunity of hearing; and

(vi) what are the directions of the Government, reference of which has been made in the letter dated 7-8-1986 by the Collector, Jamnagar.

5. In the absence of any material on record on behalf of the respondents it is difficult to accept that any appeal has been filed by the Collector, Jamnagar against the order of Secretary (Appeals), Revenue Department at Ahmedabad dated 5th November, 1982. Secondly, in case such an appeal has been filed then it is obligatory upon the respondent-State to disclose before this Court what decision has been given in the appeal. That precisely has not been done in the present case.

6. The Secretary (Appeals) of the Revenue Department while dealing with the appeal filed by the petitioner against the order of the Collector, Jamnagar ordering for forfeiture of land in dispute of the petitioner for non-fulfillment of the condition subject to which the same was allotted to the petitioner by giving reference to the Government resolution dated 26th August, 1947 observed that as per this resolution where the grantee who belongs to backward class makes first time breach of the condition on which land was granted to him, the land in dispute can be regranted to him subject to the payment of penalty of Re. 1/-. The order has been given by the Secretary (Appeals) to the Collector to regrant the land to the petitioner subject to the payment of penalty but nowhere it has been ordered by the Secretary (Appeals), Revenue Department that the regrant of the land should have been subject to the payment of the then market price of the land in dispute. The decision of the Secretary (Appeals) is made by order in the name of his Excellency the Governor of Gujarat. In such matter, it *prima-facie* seems to be not acceptable that such an order is appealable to the Government. The respondent has not produced on record that any appeal against the order has been preferred. From the other documents which have come on record it is clearly borne out that the Collector has demanded from the petitioner, by way of penalty, the

amount of market price of the land in dispute. The Secretary (Appeals) has ordered for regrant of the land to the petitioner subject to the charging of penalty and not the market price of the land in dispute by way of penalty. Apart from this, the directions of the Government in pursuance to which the District Collector, Jamnagar demanded the market price of the land from the petitioner by way of penalty for regrant of the same in pursuance of this order of Secretary (Appeals) have not been produced on the record of this special civil application and further before giving those directions fastening heavy financial liability upon a backward class person, the State Government has admittedly not given any notice or opportunity of hearing to the petitioner. The petitioner is a Harijan and land has been allotted to him for his upliftment but even if he could not put the land for agricultural use within stipulated time and the land is ordered to be forfeited then while regranting the land to him reasonable amount, it is understandable could have been charged. If we go by the resolution dated 26th August, 1947 that amount could have been one rupee only, or any reasonable amount as decided by the competent authority but the demand of the market price of the land from this class of person by way of penalty for regrant of the land and more so when the said direction has not been made by the Secretary (Appeals), Revenue Department is highly arbitrary and unjustified. A poor person has been constrained to approach this Court because of this arbitrary approach of the respondents. The demand of market price of the land from the petitioner for regrant of land to him by way of penalty does not stand to any logic or justification and it cannot be allowed to stand. Otherwise also, such a demand has been made without giving any notice or opportunity of hearing to the petitioner and on this ground also it cannot be allowed to stand.

7. In the result, this special civil application succeeds and the same is allowed. The order of the Collector, Jamnagar dated 7-8-1986 demanding market price of the land in dispute from the petitioner by way of penalty for regrant of the land to him is quashed and set aside. The petitioner, a Harijan, has been forced to approach this Court. Litigation before this Court costs and the learned counsel for the petitioner admits that he has charged reasonable fees from the petitioner. He has also given out the amount of fees which he has charged from the petitioner. That amount has to be reimbursed to the petitioner by the respondents by way of costs. The respondents are directed to pay Rs.3000/- by way of costs of this special civil application to the petitioner. The

appellate authority, Secretary (Appeals), Revenue Department, is directed to decide what amount should be paid by the petitioner to the Government as penalty for regrant of the agricultural land in dispute, after hearing the petitioner. The petitioner will then deposit the amount as determined by Secretary (Appeals) before the Collector, Jamnagar, within two months from the date of receipt of the copy of the order of the appellate authority. On deposit of the amount aforesaid, the Collector, Jamnagar, shall pass necessary order of regrant of the land in dispute to the petitioner. Rule is made absolute accordingly.

zgs /-(s)